

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CALVIN EUGENE SALTERS,

Defendant-Appellant.

UNPUBLISHED

January 26, 2001

No. 215396

Wayne Circuit Court

Criminal Division

LC No. 98-003542

Before: Talbot, P.J., and O’Connell and Cooper, JJ.

PER CURIAM.

Defendant appeals as of right from a jury conviction of possession with intent to deliver 50 grams or more but less than 225 grams of a mixture containing cocaine, MCL 333.7401(2)(a)(iii); MSA 14.15(7401)(2)(a)(iii), and possession of marijuana, MCL 333.7403(2)(d); MSA 14.15(7403)(2)(d). The trial court sentenced defendant as a second habitual offender, MCL 769.10; MSA 28.1082, to a term of seven to thirty years’ imprisonment for the cocaine conviction and time served for the marijuana conviction. We affirm.

Defendant argues that instructional error denied him a fair trial. Because defendant did not object to the challenged jury instructions at trial, his claims of instructional error are not preserved. Therefore, appellate relief is precluded absent a showing of plain error that affected defendant’s substantial rights. *People v Carines*, 460 Mich 750, 774; 597 NW2d 130 (1999).

Defendant first claims that the court’s supplemental instruction in response to a jury note was incorrect. In answer to the jury’s question about whether an intent to deliver requires a certain time period, the court responded, “[T]he simple answer is no. There’s no time period.” Actual delivery of narcotics is not required to prove intent to deliver. *People v Wolfe*, 440 Mich 508, 524; 489 NW2d 748 (1992), amended on other grounds 441 Mich 1201 (1992). “Intent to deliver has been inferred from the quantity of narcotics in a defendant’s possession, from the way in which those narcotics are packaged, and from other circumstances surrounding the arrest.” *Id.* “Possession with intent to deliver can be established by circumstantial evidence and reasonable inferences arising from the evidence, just as it can be established by direct evidence.” *Id.* at 526. We conclude that defendant has failed to demonstrate plain error with respect to the court’s supplemental instruction. Contrary to defendant’s assertion, the trial court did not instruct the jurors that the intent to deliver need not be contemporaneous with the possession of the cocaine.

Defendant also claims that the trial court erred in failing to include “moral certainty” language in its definition of reasonable doubt. We disagree. The failure to include “moral certainty” language, by itself, does not constitute plain error. *People v Hubbard (After Remand)*, 217 Mich App 459, 487; 552 NW2d 493 (1996); *People v Sammons*, 191 Mich App 351, 372; 478 NW2d 901 (1991). See also *People v Cooper*, 236 Mich App 643, 656; 601 NW2d 409 (1999).

Next, defendant argues that the trial court erred in failing to suppress the evidence seized from his vehicle following a traffic stop. We disagree.

The officer testified that he initiated a traffic stop because defendant’s vehicle was in the middle of the street and was impeding traffic. No other traffic was in the area at the time. Defendant claims that, because no other traffic was in the area at the time, he was not “impeding traffic.” The court also found that the testimony of the police officers was more credible than that of defendant and the other defense witness, and that the police officers made a legitimate traffic stop.

To the extent that a trial court bases its decision regarding a motion to suppress on an interpretation of the law, our review is de novo. *People v Kaslowski*, 239 Mich App 320, 323; 608 NW2d 539 (2000). We review the court’s factual findings made in conjunction with a motion to suppress for clear error. *Id.* Questions regarding the credibility of witnesses is a matter for the trial court, as the trier of fact, to decide. *People v Fetterley*, 229 Mich App 511, 545; 583 NW2d 199 (1998); *People v Givans*, 227 Mich App 113, 123-124; 575 NW2d 84 (1997).

MCL 257.676b(1); MSA 9.2376(2)(1) provides, in pertinent part:

(1) A person, without authority, shall not block, obstruct, impede, or otherwise interfere with the normal flow of vehicular or pedestrian traffic upon a public street or highway in this state, by means of a barricade, object, or device, or with his or her person. This section shall not apply to persons maintaining, rearranging, or constructing public utility facilities in or adjacent to a street or bridge.

The primary purpose of statutory interpretation is to ascertain and give effect to the intent of the Legislature. *Karpinski v St John Hospital-Macomb Center Corp*, 238 Mich App 539, 542-543; 606 NW2d 45 (1999). The intent of the statute was clearly to prohibit a vehicle from impeding vehicular or pedestrian traffic in order to promote public safety. Consistent with this purpose, we conclude that the statute did not require a showing of an actual impediment to the smooth flow of traffic in order to establish a violation of the statute. The trial court did not err in finding that the stop was proper.

Next, defendant argues that, even if the police had probable cause to arrest him for open intoxicants in the car and for driving without a license, the search of the vehicle was unreasonable because the police did not have probable cause to believe that evidence of illegal drugs would be found in the vehicle. We disagree.

The police officer testified that he smelled marijuana emanating from defendant's vehicle as he approached it. In *People v Kazmierczak*, 461 Mich 411, 426; 605 NW2d 667 (2000), the Supreme Court held that "the smell of marijuana alone by a person qualified to know the odor may establish probable cause to search a motor vehicle, pursuant to the motor vehicle exception to the warrant requirement" Thus, the police had probable cause to believe that the car contained contraband. "[I]f probable cause exists to believe a car contains contraband, the Fourth Amendment permits police to search the vehicle without more." *Id.* at 422. Accordingly, the search of the vehicle in this case was also proper.

Defendant next contends that the trial court erred in denying his motion for a directed verdict because the evidence was insufficient to support his convictions for the charged crimes. We disagree. This Court reviews the validity of a motion for a directed verdict using the same standard as the trial court. *People v Warren*, 228 Mich App 336, 345-346; 578 NW2d 692 (1998), modified on other grounds 462 Mich 415 (2000). The trial court must consider the evidence presented at the time of the motion in the light most favorable to the prosecutor. *Id.* If a rational trier of fact could find that the prosecutor established the elements of the crime beyond a reasonable doubt, the court must deny the motion. *People v Mayhew*, 236 Mich App 112, 126; 600 NW2d 370 (1999).

Viewed in a light most favorable to the prosecution, the prosecutor presented sufficient circumstantial evidence to enable a rational trier of fact to find that the essential elements of the crimes were proven beyond a reasonable doubt. *Wolfe, supra* at 519-521; *Sammons, supra* at 371. The evidence established a sufficient connection between defendant and the illegal drugs to support the inference that he exercised dominion and control over them. *Wolfe, supra* at 520.

Defendant also argues that the district court erred when it required him to surrender a pair of gloves that were in his possession on the date of the preliminary examination. The prosecutor had asserted that the gloves were identical to the type of rubber gloves seized from defendant's vehicle, which were filled with crack cocaine. According to defendant, the gloves were more prejudicial than probative, and therefore inadmissible under MRE 403. We find no error. The gloves constituted relevant evidence under MRE 401, because they tended to make the existence of a fact, i.e., whether defendant hid cocaine in the same or similar gloves, more probable than it would have been without the evidence. *People v Mills*, 450 Mich 61, 66-67; 537 NW2d 909 (1995), modified on other grounds 450 Mich 1212 (1995). Further, the danger of unfair prejudice did not outweigh the probative value of the evidence.

Defendant next claims that reversal is required because the trial court violated MCR 2.511(F) when it permitted both sides to exercise peremptory challenges before another juror was selected to replace each excused juror. Because defendant did not object to the selection procedure at trial, our review is limited to determining whether defendant has demonstrated a plain error that affected his substantial rights. *Carines, supra* at 763-764. Assuming, without deciding, that the trial court violated the court rule, defendant has failed to establish that the alleged error affected his substantial rights. Therefore, appellate relief is not warranted based on this issue.

Defendant asserts that his trial counsel was ineffective. Limiting our review to the record, *People v Barclay*, 208 Mich App 670, 672; 528 NW2d 842 (1995), and based our failure

to find any error that affected defendants' substantial rights, we do not conclude that counsel's performance fell below an objective standard of reasonableness or that the representation so prejudiced him that he was denied his right to a fair trial. *Strickland v Washington*, 466 US 668, 694; 104 S Ct 2052; 80 L Ed 2d 674 (1984); *People v Pickens*, 446 Mich 298, 302-303; 521 NW2d 797 (1994); *People v Effinger*, 212 Mich App 67, 69; 536 NW2d 809 (1995). For the same reason, we must reject defendant's claim that he was deprived of a fair trial because of the cumulative effect of several errors. *People v Griffin*, 235 Mich App 27, 46; 597 NW2d 176 (1999).

Finally, we find no merit to defendant's claim that the trial court violated MCR 6.429(A). This is not a case where the trial court modified a previously imposed sentence. Rather, the court announced on the record at the sentencing hearing that it was sentencing defendant to an habitualized term of seven to thirty years' imprisonment. This sentence was also reflected on the court's judgment of sentence, although the court recorded it in the wrong part of the judgment of sentence form. Under the circumstances, the court was permitted to correct this clerical error by issuing a corrected judgment of sentence. MCR 6.435(A).

Affirmed.

/s/ Michael J. Talbot
/s/ Peter D. O'Connell
/s/ Jessica R. Cooper